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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,658	01/24/2002	Hiromi Nambu	218360US0	9726
22850	7590	06/13/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			FUBARA, BLESSING M	
1940 DUKE STREET			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			1618	
NOTIFICATION DATE		DELIVERY MODE		
06/13/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/053,658	NAMBU ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
BLESSING M. FUBARA	1618		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If the reply is filed after the period specified in the communication, a new statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on 03 March 2008.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

4)  Claim(s) 1,3-5,7,8,10-22,30-36,41 and 42 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,3-5,7,8,10-22,30-36,41 and 42 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All  Some \*  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Filed (PTO-592) \_\_\_\_\_ 4)  Interfiling Summary (PTO-413) Paper No(s) \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) \_\_\_\_\_ 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6)  Other: \_\_\_\_\_

**DETAILED ACTION**

1. In view of the Appeal Brief filed on 03/03/08, PROSECUTION IS HEREBY REOPENED. New rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Michael G. Hartley/

Supervisory Patent Examiner, Art Unit 1618.

Claims 1, 3-5, 7, 8, 10-22, 30-36, 41 and 42 are pending.

*Response to Arguments*

**Previous rejections that are not reiterated herein are withdrawn.**

Incorrect Serial Number for Claims

**Please Note: The claims filed with the Appeal Brief are given a different application number of 10/829,936. Applicant is requested to please correctly identify the claims of the current application 10/053,658.**

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3-5, 7, 8, 10-22, 30-36, 41 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The claims recite “depilatory gel” and “keratin reducing compound.” The boundaries of “depilatory gel” and “keratin reducing compound” for which protection is sought is not clear.

5. Method claims 20, 30, 35 and 36 do not recite what the method is about or what method it is that is being claimed. The claims recite only the steps of doing something without telling what the method is. Clarification is respectfully requested.

6. Claim 1 is confusing because the last two lines of the claim read on the process of making the polymeric composition. Clarification is respectfully requested.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 7, 8, 10-22, 30-36, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guillaume et al. (WO 98/44898, previous used art) in view of Combe et al. (US 5141560).

3. Guillaume discloses a depilatory aqueous gel composition that comprises cross-linked polyacrylic polymer in the presence of dodecadiene cross-linking agent, polyvinyl pyrrolidone, thioglycolate; Guillaume also teaches the process of making the composition(see claims 1-13), oily particles (page 9, line 17 and meeting the water insoluble particles of claim 4). Guillaume teaches the claimed composition of claims 1, 3-5, 7, 11, 14-16, 41 and 42 and the method of claims 20-22, 30-36. The viscosity of the Guillaume gel is of the order of 1,000 Pa.s (page 4, lines 15-19) which is at 1,000,000 mPa.s meeting the viscosity requirement of the claims. The depilatory agent is present at 0.1 to 6% (page 8, lines 23-26) meeting the limitations of claims 12, 18, 19. The polymer is present at 0.1 to 3% (page 8, lines 13-22) meeting claim 13. The composition of Guillaume meets the requirement of claim 8 because claim 8 defines an inherent solubility parameter represented by mathematical representation.

4. But the cross-linking agent in Guillaume is not the required ionic cross-linking agent of claims 1 and 17. But it is known in the art that calcium hydroxide can be used to cross link polymeric carboxylic acid to yield cross-linked calcium polyacrylate (column 4, lines 55 and 56). Therefore, taking the teachings of the references, one having ordinary skill in the art would have

reasonable expectation of success calcium hydroxide would crosslink acrylic acid polymer to yield cross-linked calcium polyacrylate.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Hartley/  
Supervisory Patent Examiner, Art Unit 1618

/Blessing M. Fubara/  
Examiner, Art Unit 1618